

Appl. No. : 09/517,043
Filed : March 2, 2000

REMARKS

In response to the February 26, 2003 Office Action, Applicant respectfully requests the Examiner to reconsider the above-captioned application in view of the foregoing amendments and the following comments. Claims 1-13 and 18-40 are pending in the present application. Claims 14-17 and 41, which were the subject of a restriction requirement, are cancelled.

In the February 26, 2003 Office Action, the Examiner rejected Claims 1 and 11 under 35 U.S.C. § 103(a) as being unpatentable over Sheff ("Mr. Satisfaction"). The Examiner also rejected Claims 2-5, 7, and 13 over Sheff in view of U.S. Patent No. 5,950,172 to Klingman (hereinafter, "Klingman"). The Examiner rejected Claims 6, 8, 9, and 12 over Sheff in view of InstantSurvey by NetReflector (hereinafter, "InstantSurvey"). The Examiner rejected Claim 10 under 35 U.S.C. § 103(a) as being unpatentable over Klingman in view of U.S. Patent No. 6,092,049 to Chislenko (hereinafter, "Chislenko"). The Examiner rejected Claims 18-21, 24, 26, 27, 30-38, and 40 under 35 U.S.C. § 103(a) as being unpatentable over Klingman. The Examiner rejected Claim 29 under 35 U.S.C. § 103(a) as being unpatentable over Klingman in view of *Marketing for Dummies* by Alexander Hiam (hereinafter, "Hiam"). The Examiner rejected Claim 25 under 35 U.S.C. § 103(a) as being unpatentable over Klingman in view of InstantSurvey. The Examiner rejected Claims 22, 23, 28 and 39 under 35 U.S.C. § 103(a) as being unpatentable over Klingman in view of Chislenko.

Discussion of Rejections under 35 U.S.C. § 103(a) over Sheff

Claims 1 and 11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Sheff. For the reasons discussed below, Applicant respectfully traverses the rejection of Claims 1 and 11.

To establish a prima facie case of obviousness the prior art reference must teach or suggest *all* (emphasis added) the claim limitations. *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991); MPEP § 2143. Because Sheff fails to teach or suggest all the elements of Claims 1 or 11, Applicant respectfully traverses the Examiner's rejection of Claims 1 and 11.

Claim 1 recites:

A method of encouraging customers to provide reviews of purchased items, the method comprising:

receiving an order from a first customer for an item purchased from an electronic catalog;

estimating by what date the first customer will have at least initially evaluated the item based at least on the item type;

initiating an electronic transmission, based at least in part on the estimated date, to the first customer on or after the estimated date of a message requesting the first customer to provide a review of the item to thereby encourage the first customer to provide at least one review;

receiving the review from the first customer electronically; and
presenting the review to a second customer interested in the item.

A careful review of Sheff fails to disclose the element of "receiving an order from a first customer for an item purchased from an electronic catalog." Further, Sheff fails to disclose "estimating by what date the first customer will have at least initially evaluated the item based at least on the item type." Additionally, Sheff fails to disclose "initiating an electronic transmission, based at least in part on the estimated date, to the first customer on or after the estimated date of a message requesting the first customer to provide a review of the item to thereby encourage the first customer to provide at least one review." Further, the Sheff fails to disclose "receiving the review from the first customer electronically." Finally, Sheff fails to disclose "presenting the review to a second customer interested in the item." Thus, Sheff fails to disclose any of the aforementioned elements of Claim 1.

Nonetheless, the Examiner argues that Sheff, at page 3, sections 2-7 discloses "wherein a customer orders an item. This item falls onto a list that reflects when the item was purchased." Applicant respectfully traverses this characterization of Sheff. A careful review of page 3, sections 2-7 fails to disclose "wherein a customer orders an item. This item falls onto a list that reflects when the item was purchased." Indeed, the words "order" or "orders" do not even appear at page 3, sections 2-7. Thus, even assuming arguendo, that "ordering items via electronic catalogs was old and well known at the time of the invention" as asserted by the Examiner, there would be no motivation to modify Sheff as suggested by the Examiner to receive an order from a customer for an item purchased from an electronic catalog.

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With respect to the element “estimating by what date the first customer will have at least initially evaluated the item based at least on the item type,” the Examiner takes the position that Sheff, at page 3, sections 2-7, and page 4, sections 1-2 discloses “wherein a date is estimated by which the customer will have at least initially evaluated the items based on the item type.” Applicant respectfully traverses this characterization of Sheff. Sheff merely discloses customer surveys that are consistently sent out at fixed, pre-determined time periods after purchase, (e.g., 90 days, one year, or five years). Sheff does not disclose or suggest waiting a different period of time for a different item type, such as for different types of vehicles (vans, trucks, sedans) or different types of products or services, such as tires, phone service or the like. Because Sheff appears to disclose using the same pre-determined time periods after purchase, (e.g., 90 days, one year, or five years) *regardless of the type of vehicle*, Sheff teaches away from the invention as claimed by Claim 1.

With respect to the element “initiating an electronic transmission, based at least in part on the estimated date, to the first customer on or after the estimated date of a message requesting the first customer to provide a review of the item to thereby encourage the first customer to provide at least one review,” the Examiner takes the position that Sheff, at pages 1, section 1-3, page 3, sections 2-7, and page 4, sections 1-2, discloses “wherein a transmission of the review request is initiated based on the estimated date.” The Examiner admits that Sheff fails to disclose that the review request and review are transmitted electronically. Nonetheless, the Examiner argues that it would be obvious to send review requests via electronic means in order to increase the efficiency and timeliness of the surveying and purchasing processes by automating process that were previously done manually or by mail.

Rather than teaching or suggesting the invention as claimed, Sheff teaches away from “initiating an electronic transmission ... of a message requesting the first customer to provide a review.” Indeed Sheff discloses, at page 3, paragraph 7, that customarily, “Conne Fossa has two shifts of as many as 20 temporary workers hand-addressing envelopes (Power has found that more people respond to them then typed ones).” Thus, Sheff teaches that hand addressed envelopes should be used, rather than less personal methods of sending review requests, such as typed requests, and therefore teaches away from initiating an electronic transmission of a message requesting the first customer to provide a review.

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Sheff further teaches that a \$1 bill is included in the questionnaire as a thank you/incentive to would-be respondents. Because a \$1 bill cannot be included in an electronic transmission of a review request, Sheff further teaches away from initiating an electronic transmission of a message requesting a customer to provide a review. Hence, Sheff cannot be modified as suggested by the Examiner. A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984); M.P.E.P. § 2141.02. Thus, for at least the foregoing reasons, Sheff cannot be modified to include the element of “initiating an electronic transmission, based at least in part on the estimated date, to the first customer on or after the estimated date of a message requesting the first customer to provide a review of the item to thereby encourage the first customer to provide at least one review.”

With respect to the claim element “presenting the review to a second customer interested in the item” the Examiner takes the position that Sheff, at page 2, sections 2 and 3, page 3, section 2, and page 4, section 2, discloses “wherein the review is presented to a second customer who is looking at the item.” However, a careful review of the sections cited by the Examiner fail to disclose presenting a review from a first customer to a second customer. Indeed, rather than teaching or suggesting presenting a review from a first customer to a second customer, Sheff, at page 4, paragraph 9, teaches that “Power only releases –to the public, anyway—a list of the brands that scored above average. Those that finish below average are included but are listed in alphabetical order.” Thus, Sheff teaches away from presenting the review of a first customer to a second customer, and instead teaches that only aggregated and processed survey results are provided to the public.

With respect to Claim 11, the Examiner takes the position that Sheff, at page 5, section 1, discloses “requesting the first customer to review a seller of the purchased item on or after the estimated date.” However, a careful review of Sheff fails to disclose requesting a customer to review a seller of the purchased item on or after the estimated date. Instead, Sheff, at page 5, merely states “Beginning next year, he will measure which dealers in the country have the most-satisfied customers.” Nowhere does Sheff teach or suggest requesting a customer to review a seller of the purchased item on or after the estimated date as claimed.

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For at least the foregoing reasons, Applicant respectfully requests the Examiner to withdraw the rejection of Claims 1 and 11 and to allow Claims 1 and 11:

Discussion of Rejections under 35 U.S.C. § 103(a) over Sheff in view of Klingman

With respect to Claim 2, the Examiner states that Sheff, at page 1, sections 1-3, page 3, sections 2-7, and page 4, sections 1-2, discloses customers supplying review of items purchased, wherein the customer is given a review form and fills it out. However, the Examiner admits that Sheff does not disclose the format of the form wherein the review is a numerical rating. Nonetheless, the Examiner argues that Klingman discloses a method wherein the review is a numerical rating. The Examiner argues that both Sheff and Klingman teach customer review systems wherein the customer rates a previously purchased item using a format provided by the system. The Examiner further argues that it would have been obvious to one of ordinary skill in the art at the time of the invention to have the review of Sheff include a numerical rating in order to increase the integrity of the rating by collecting it and presenting it in a reliable, easy to understand format. The Examiner states that it is old and well known that numbers are more universal than words.

Applicant respectfully traverses the rejection of Claim 2. As set forth in M.P.E.P. § 2143.01, in order to establish obviousness based on modification of a reference, the prior art must suggest the desirability of the claimed combination. "The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination." In re Mills, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990); M.P.E.P. § 2143.01. As similarly discussed above, Sheff, at page 4, paragraph 9, teaches that "Power only releases --to the public, anyway-- a list of the brands that scored above average." Thus, Sheff teaches that only aggregated and processed survey results are provided to the public, and so even if the disclosure of Sheff was modified to include numerical ratings on the survey forms, the individual numerical survey results would not be presented to other customers as such. Hence, the motivation provided by the Examiner, that of presenting the survey results in an easy to understand format, is not present, as the form of the information received in Sheff is different than the form presented to the public. Further, because the survey results disclosed by Sheff are already in an easy to understand format (a list of the brands that

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scored above average), there would be no motivation to modify Sheff with the disclosure of Klingman to provide the survey results in an easy to understand format as put forth by the Examiner.

With respect to Claim 3, the Examiner states that Sheff, at page 1, sections 1-3, page 3, sections 2-7, and page 4, sections 1-2, discloses customers supplying reviews of items purchased, wherein the customer is given a review form and fills it out. However, the Examiner admits that Sheff does not disclose the format of the form wherein the review is a textual rating. Nonetheless, the Examiner argues that Klingman discloses a method wherein the review is a textual rating. The Examiner further argues that it would have been obvious to one of ordinary skill in the art at the time of the invention to have the review of Sheff include a textual rating in order to increase the robustness of the rating by collecting an opinion from the customer that reflects his/her actual sentiments. The Examiner takes the position "that it is old and well known that words are more expressive in giving an opinion than are numbers." Applicant respectfully traverses the Examiner's characterization of Sheff. The Examiner has mischaracterized Sheff. Sheff does not even disclose giving an opinion using numbers. The Examiner has therefore failed to provide an adequate motivation to modify Sheff using the teachings of Klingman.

With respect to Claim 4, the Examiner states that Sheff discloses a "method wherein the review is collected, and in conjunction with presenting the review to other customers, indicating that the review comes from a purchaser of the reviewed item (See pages 1, sections 1-3, page 2, section 4, page 3, sections 2-7, and page 4, sections 1-2, wherein their review is transmitted to and received from a consumer and, when the review is presented to another potential purchaser, the report containing the review is called a consumer report, reflecting that the scores are from actual consumers of the item)."

However, a careful review of the sections cited by the Examiner fails to disclose that a purchaser's review is presented to other customers, and so does not teach or suggest presenting a purchaser's review in the context that the review comes from a purchaser of the item. Indeed, rather than teaching or suggesting a review is presented to other customers in the context that the review comes from a purchaser of the item, Sheff, at page 4, paragraph 9, teaches that "Power only releases -to the public, anyway-a list of the brands that scored above average. Those that finish below average are included but are listed in alphabetical order." Thus, Sheff teaches away

from presenting a review written by a purchaser to other customers, and instead teaches that aggregated, processed, non-textual survey results are provided to the public.

In addition, the Examiner admits that Sheff does not disclose the format of the form wherein the review is a textual rating. Nonetheless, the Examiner takes the position that Klingman, at Column 12, lines 18-30 and 51-63, Column 13, lines 15-19 and 40-49, teaches a method wherein the review includes a textual review.

With respect to Figure 5, it is not clear what portion of Figure 5 the Examiner is referring to. If the Examiner is referring to the box labeled "COMMENTS, ETC." Applicant respectfully notes that there is no discussion in Klingman what comments are being referred to. For example, the comments can be related to an explanation of when the graphs were generated, rather than being textual reviews.

Further, Klingman, at Column 12, lines 18-30 and 51-63, Column 13, lines 15-19 and 40-49, fails to provide any discussion of presenting a textual review to other customers. For example, Klingman, at Column 12, lines 18-30, merely recites "In an alternative embodiment (not shown), the evaluation of a product may be based on a digital YES/NO decision scheme as opposed to a weighted or analog value scheme. The latter being the scheme described above and presented in FIG. 6 wherein a range of values, e.g. 1-100, may be used to rate or evaluate a product. That is, rather than a range of values associated with the rating information, the user of a product (or a voter voting in a poll or election which is alternative application of the preferred embodiment, explained in greater detail later) may provide a 'YES' input if satisfied with the product or a 'NO' input representing dissatisfaction with the product." Thus, rather than disclosing providing a textual review Klingman merely discloses a user providing a *digital* YES/NO indication as to whether the user was satisfied with the product. There is no discussion as to whether a textual review is presented to other customers as claimed.

Similarly, Klingman, at Column 12, lines 51-63, merely recites "At least two major approaches to handling special interest groups are possible with this invention. The first approach involves using defined categories and performing mathematical analyses on the scoring data with respect to these categories. A second approach involves linking to specialty sites in which the product may be reviewed in a special light where the reviewers' recommendations are written with emphasis on the special concerns of the group. In the second approach, either the special

interest groups can be named by the seller when the product is placed on the market or with suitable design, the special interest groups can request that links to their site be added at some future time.” There is no indication that the written reviews discussed in Klingman, at Column 12, lines 51-63, are textual reviews, and even assuming *arguendo* that the written reviews were textual reviews, there is further no disclosure or suggestion that textual reviews are presented to other customers.

Further, Klingman, at Column 13, lines 15-19 and 40-49, simply recites “While graphs or score displays such as those shown in FIGS. 5 and 6 may be employed in the preferred embodiment to represent distribution of scores over all responding scorers, other forms of representations of rating information may be utilized. For example, the simplest score is a value selected from a range, such 1 to 10 or 1 to 100. ... First, as the Internet becomes ubiquitous and more commerce occurs over the net, sophisticated information should be available to those who desire the same. Second, it is always possible to simplify the presentation of information. For example, some print newspapers use an icon in the movie review section in which the stylized view ranges from absent (having walked out) to sleeping, to upright and alert to standing on the chair applauding. “Complex” graphic scores can readily be mapped into simple “cartoon” icons to provide such simplistic displays.” Thus, here Klingman merely discloses providing numeric, graphical, or cartoon icons, rather than providing textual reviews to other customers. Thus, Klingman does not teach or suggest the claimed invention. For at least the foregoing reasons, Applicant respectfully traverses the rejection of Claim 4.

With respect to Claim 5, the Examiner asserts that Sheff teaches a method further comprising offering the first customer a reward in exchange for the customer providing a review. Applicant respectfully traverses the Examiner’s characterization of Sheff. Sheff discloses that a \$1 bill is included with each survey as a “thank you/incentive to would-be respondents.” Thus, the \$1 bill is provided to survey recipients to keep *whether or not they fill out or return the survey*. A recipient would be free to simply dispose of the survey and keep the \$1 bill. Consequentially, Sheff teaches away from offering the customer a reward *in exchange* for the customer providing a review. Sheff therefore fails to teach or suggest the invention as claimed. For at least the foregoing reasons, Applicant respectfully traverses the rejection of Claim 5.

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With respect to Claim 7, the Examiner admits that Sheff does not disclose presenting the review request on a web page. Nonetheless, the Examiner takes the position that Klingman teaches a method wherein the review request is presented on a Web page, and that it would have been obvious to one of ordinary skill in the art at the time of the invention to present the review request on a web page in order to increase the effectiveness of presenting the review request to consumers. First, the Examiner has failed to demonstrate that presenting a review request on a web page is more effective than providing a review request via mail, and so has not provided a motivation to modify Sheff as proposed.

Further, rather than suggesting presenting a review request on a web page, Sheff teaches away from presenting a review request on a web page. Sheff teaches, at page 3, paragraph 7, that customarily, "Conne Fossa has two shifts of as many as 20 temporary workers hand-addressing envelopes (Power has found that more people respond to them than typed ones)." Thus, Sheff teaches that hand addressed envelopes should be used, rather than less personal methods of sending review requests, and thus teaches away from presenting a review request on a Web page. Sheff further teaches that a \$1 bill is included in the questionnaire as a thank you/incentive to would-be respondents. Thus, Sheff further teaches away from initiating an electronic transmission of a message requesting a customer to provide a review, as paper currency, such as a \$1 bill, cannot be included in a review request presented on a Web page. Hence, Sheff cannot be modified using the disclosure of Klingman as suggested by the Examiner. A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984); M.P.E.P. § 2141.02. Thus, for at least the foregoing reasons, Sheff cannot be modified so that "the review request is presented on a Web page," as claimed. Applicant therefore respectfully traverses the rejection of Claim 7.

With respect to Claim 13, the Examiner admits that Sheff fails to disclose rating a book, and that further fails to disclose that the estimated time is based at least in part on the length of the book. Nevertheless, the Examiner asserts that Klingman teaches "a method where a type of item rated is a book and after a period of use, the customer chooses to rate the item." However, the Examiner admits that Klingman fails to disclose estimating a time period based at least in part on the length of the book.

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Nonetheless, the Examiner argues that "Sheff discloses the practice of providing follow-up reviews for items at estimated time intervals after purchase to ascertain an opinion about said purchase based on an adequate period of usage, as stated by Sheff, pages 1, 3, and 4. Klingman also discloses follow-up evaluations provided by customers for purchased item types such as books ... and that a book is an item purchased electronically, as stated above. Furthermore, it is old and well know that a common way to use a book is to read it and the time this usage (reading) takes depends on factors such as its length. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to send a customer an evaluation to rate an item after the customer has had enough time to use the item because doing so would increase the accuracy of the reviews provided by the customer by ensuring that the customer has ample knowledge about the product he/she is rating."

Applicant respectfully traverses the Examiner's rejection of Claim 13 for the reasons discussed above with respect to Claim 1. In addition, Applicant respectfully traverses the Examiner's assertion that estimating based on the length of the book would be obvious over Sheff in view of Klingman. As stated above, Sheff merely discloses using fixed, pre-determined time periods to send out customer surveys *regardless of the particular type of vehicle* for which a survey is being sent. Thus, Sheff teaches away from considering particular traits of a book, such as its length. Because Sheff teaches away from considering particular traits of a book, such as its length, Sheff cannot be modified so that the "item is a book and the estimated time is based at least in part on the length of the book," as claimed

Discussion of Rejections under 35 U.S.C. § 103(a) over Sheff in view of InstantSurvey

With respect to Claims 6, 8 and 9, the Examiner admits that Sheff does not disclose providing requests via e-mail, accessing the review form using the review request message, or including a hyperlink in the request message to the review form. Nonetheless, the Examiner asserts that InstantSurvey teaches, in Reference A, page 2 and Reference B, page 2, methods wherein: the review request is provided via e-mail, the customer accesses a review form using the review request message, and the review request includes a hyperlink to a review form, respectively for Claims 6, 8 and 9.

However, Sheff teaches away from combining Sheff and InstantSurvey. As Applicant noted in discussing the rejection of Claim 1, Sheff discloses, at page 3, paragraph 7, that "Conne Fossa has two shifts of as many as 20 temporary workers hand-addressing envelopes (Power has found that more people respond to them than typed ones)." Thus, Sheff teaches that hand-addressed envelopes should be used as they result in a better response rate, rather than less personal methods of sending review requests, and therefore teaches away from providing requests via e-mail, accessing the review form using the request message, or including a hyperlink in the request message to the review form.

Sheff further teaches that a \$1 bill is included in the questionnaire as a thank you/incentive to would-be respondents. A \$1 bill could not be included in an e-mail. Thus, Sheff further teaches away from providing requests via e-mail, accessing the review form using the request message, or including a hyperlink in the request message to the review form, and so Sheff teaches away from the combination with InstantSurvey. Applicant therefor traverses the rejection of Claims 6, 8 and 9.

With respect to Claim 38, the Examiner admits that Klingman does not disclose providing the review request via e-mail, but asserts that InstantSurvey, in Reference A, page 2 and Reference B, page 2, discloses a method where a survey is provided via e-mail. Applicant respectfully traverses the Examiner's rejection of Claim 38 for the reasons discussed above with respect to Claims 6, 8 and 9.

With respect to Claim 12, the Examiner admits that Sheff does not disclose receiving an e-mail address provided by the first customer or that this address is that of a person other than the first customer.

Nonetheless, the Examiner asserts that InstantSurvey teaches receiving at least one e-mail address provided by the customer and forwarding the customer review to the e-mail address, at Reference C, page 2 and Reference A, page 2 and Reference B, page 2. Applicant respectfully traverses the Examiner's characterization of InstantSurvey. InstantSurvey does not teach sending *reviews* to e-mail addresses received from customers. Reference C discloses sending customer surveys to a list of customer e-mail addresses. Likewise, Reference A discloses taking e-mail addresses through which invitations to take surveys would be sent. Finally, Reference B discloses sending questionnaires via e-mail. None of these references, however, discloses

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sending completed reviews to e-mail addresses. Thus, InstantSurvey fails to teach or suggest "receiving an e-mail address provided by the customer and forwarding the customer review to this e-mail address," as recited by amended Claim 12. Because the combination of the prior art references must teach or suggest every limitation of the claim to support a prima facie case of obviousness, Applicant respectfully traverses the Examiner's rejection of Claim 12.

Further, the Examiner admits that InstantSurvey fails to disclose that this email address is that of a person different than the first customer. The Examiner nonetheless maintain that it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the review request of Sheff to the customer using email in order to increase the effectiveness of the surveying campaign by more efficiently attaining more reviews at a lower cost. Because Sheff teaches away from increase the effectiveness of the surveying campaign by more efficiently attaining more reviews at a lower cost, Sheff cannot be modified as proposed by the Examiner. As similarly discussed above, rather than suggesting that lower cost surveys be used to increase the effectiveness of a surveying campaign, Sheff teaches "hand-addressing envelopes (Power has found that more people respond to them then typed ones)." Sheff further teaches that a \$1 bill is included in the questionnaire. Thus, Sheff further teaches away from receiving at least one e-mail address provided by the first customer, the email address being that of a person other than the first customer; and forwarding the review to the e-mail address and so cannot be modified as proposed by the Examiner.

Discussion of Rejections under 35 U.S.C. § 103(a) over Sheff in View of Chislenko

With respect to Claim 10, the Examiner admits that Sheff does not disclose using a collaborative filter which provides the customer personalized recommendations for items similar to the reviewed item. Nonetheless, the Examiner states that Chislenko teaches a method further comprising using a collaborative filter which, based at least in part on the first customer's review, provides the first customer personalized recommendations for items similar to the reviewed item. The Examiner further takes that position that it would have been obvious to one of ordinary skill in the art at the time of the invention to use the previous product review of a customer to provide said customer with recommendations for future purchases in order to

increase the usefulness of the received review of the customer and use it to increase sales for the involved company.

However, as similarly discussed with respect to Claim 1, Sheff, at page 4, paragraph 9, teaches that “Power only releases –to the public, anyway—a list of the brands that scored above average. Those that finish below average are included but are listed in alphabetical order.” The review process disclosed by Sheff does not provide for interactivity with the reviewer. Indeed, other than the general release of the brand listing to the general public, Sheff does not disclose providing any feedback of any type to the reviewer. Thus, Sheff, which teaches providing members of the public with the same list of brands, without any interactivity with the review providers, teaches away from providing a first customer with personalized recommendations for items similar to the reviewed item and instead teaches that only aggregated and processed survey results are provided to the public. Sheff can therefore not be modified using the disclosure of Chislenko as proposed by the Examiner. Applicant therefore respectfully traverses the rejection of Claim 10.

Discussion of Rejections under 35 U.S.C. § 103(a) over Klingman

With respect to Claim 18, the Examiner asserts that Klingman teaches “inferring that the customer has evaluated the item after a time period of use.” Additionally, the Examiner takes the position that Klingman (at Column 8, lines 22-25, Column 9, lines 9-13 and 41-46, and Column 20, lines 55-59) teaches “providing a review request in response to at least the inference.” The Examiner states that “Klingman teaches purchasing an item, such as a book, via an electronic catalog, and after a period of use of said purchasing item, assuming a customer has come to an opinion on the quality of the purchases item and allowing the customer to rate the item.”

Applicant respectfully traverses the Examiner’s characterization of Klingman. Klingman, at Column 8, lines 22-25 recites “The mechanism described herein is based on the belief that the best information comes from previous buyers, those who have purchased and used the product being scored. The validity is achieved by preventing multiple access to the scoring mechanism,” and thus, rather than disclosing the method as claimed, or any method other than preventing multiple access, this citation merely discloses a belief upon which the described mechanism is based.

Klingman, at Column 9, lines 9-13 and 41-46, recites "In performing either one of the above, the buyer's system may be provided with rating information which is ultimately displayed to the buyer, on the buyer's screen such as the one appearing in FIG. 5 (note, this screen may be also used when trying and/or purchasing the desired product) ... Assuming that after a period of use the buyer has come to an opinion on the quality of the purchased product (it may be a superior product, or it may be an inferior product), the buyer may wish to help other buyers and reward or punish the producer of the product by participating in the product evaluation system. If so, the buyer may then link again to the product's web page located on TRY server 40 (in FIG. 3) which was earlier accessed by the buyer when trying a demonstration version of the product." Thus, this citation teaches away from the invention as claimed as the same screen is provided whether or not the user has purchases the item. Indeed, Klingman discloses accepting reviews through the user-initiated "clicking" of the "SCORE" button, said button apparently displayed *whenever* an product web page is displayed by the system, *whether or not a user has purchased the product, whether or not the user has received a purchased product, and whether or not a user has had time to evaluate a purchased product.*

Similarly, Klingman, at Column 20, lines 55-59, recites "In FIG. 8(b), after some variable amount of time, in step 194, the buyer may use the product as indicated by step 196. At decision block 198, the buyer may have the option of critiquing the product if he/she has not suppressed caller ID as discussed earlier." Thus, this citation fails to disclose providing a review request in response to at least the inference at a time spaced apart from the order. Rather, Klingman, at Column 20, lines 55-59, appears to disclose that it is up to the buyer to decide to wait a period of time and then it is further up to the buyer to initiate submitting a critique.

Klingman therefore fails to teach or suggest "providing a review request in response to at least the inference at a time spaced apart from the order, wherein the review request requests that the customer provide a review of the purchased item."

In addition, the Examiner admits that Klingman does not disclose inferring when the customer have evaluated the item, but nonetheless takes that position that with respect to "inferring when the customer has evaluated the item ... it would have been obvious to one of ordinary skill . . . to send a customer an evaluation to rate an item after the customer had had enough time to use the item because doing so would increase the accuracy of the reviews

provided by the customers by ensuring that the customer has ample knowledge about the product he/she is rating.”

However, as discussed above, Klingman merely discloses that a customer navigates to a web page, and causing a scoring form to be presented on the screen following a user-initiated button click (Column 11, lines 4-10). Further, Klingman, at Column 9, lines 44-46, discloses a system in which the buyer manually navigates to the product’s web page, at which point, *and not before*, the buyer sees a scoring button used to score the product. If the buyer fails to manually navigate to the product’s web page, he or she will not see any evaluation request. Further, Klingman discloses accepting reviews through the user-initiated “clicking” of the “SCORE” button, said button apparently displayed *whenever* an product web page is displayed by the system, *whether or not a user has purchased the product, whether or not the user has received a purchased product, and whether or not a user has had time to evaluate a purchased product*. (Column 9, 30-32, 46-49; Column 10, 6-12; Figure 5). Because Klingman allows a buyer to rate a purchased item immediately after purchasing, *before the buyer has even received the product and before an opinion could possibly have been formed*, Klingman does not, and has no need to provide a review request in response to at least the inference at a time spaced apart from the order, wherein the review request requests that the customer provide a review of the purchased item.

A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984); M.P.E.P. § 2141.02. Klingman therefore teaches away from “inferring when the customer has evaluated the item; providing a review request in response to at least the inference providing a review request in response to at least the inference at a time spaced apart from the order, wherein the review request requests that the customer provide a review of the purchased item, wherein the review request requests that the customer provide a review of the purchased item,” as recited by Claim 18 and so cannot be modified as put forth by the Examiner. Applicant therefore respectfully traverses the Examiner’s rejection of Claim 18.

With respect to Claim 20, as similarly discussed with respect to Claim 4, Klingman fails to teach or suggest presenting a textual review to customers. Instead, Klingman merely discloses

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presenting numeric, graphical, or cartoon icon reviews. Applicant therefore respectfully traverses the Examiner's rejection of Claim 20.

With respect to Claim 24, the Examiner takes the position that Klingman (at Column 8, lines 22-25, Column 9, lines 9-13 and 41-46, and Column 20, lines 55-59) discloses "a method where the ability to rate an item is based on a time period of use after which the customer will be able to form an opinion about said item." As similarly discussed above with respect to Claim 18, Klingman, at Column 8, lines 22-25, recites "The mechanism described herein is based on the belief that the best information comes from previous buyers, those who have purchased and used the product being scored. The validity is achieved by preventing multiple access to the scoring mechanism," and thus, rather than disclosing the method as claimed, or any method other than preventing multiple access, this citation merely discloses a belief upon which the described mechanism is based.

Similarly, Klingman, at Column 9, lines 9-13 and 41-46, recites "After the purchase of the product, the buyer may wish to rate the purchased product by assigning a score with a range of scores offered by the merchant, corresponding to the degree of satisfaction of the purchased product by the buyer. ... Assuming that after a period of use the buyer has come to an opinion on the quality of the purchased product (it may be a superior product, or it may be an inferior product), the buyer may wish to help other buyers and reward or punish the producer of the product by participating in the product evaluation system. If so, the buyer may then link again to the product's web page located on TRY server 40 (in FIG. 3) which was earlier accessed by the buyer when trying a demonstration version of the product." Thus, this citation teaches away from the invention as claimed as the same screen is provided whether or not the user has purchases the item. Indeed, Klingman discloses accepting reviews through the user-initiated "clicking" of the "SCORE" button, said button apparently displayed *whenever* a product web page is displayed by the system, *whether or not a user has purchased the product, and whether or not a user has had time to evaluate a purchased product.*

Similarly, Klingman, at Column 20, lines 55-59, recites "In FIG. 8(b), after some variable amount of time, in step 194, the buyer may use the product as indicated by step 196. At decision block 198, the buyer may have the option of critiquing the product if he/she has not suppressed caller ID as discussed earlier." Thus, this citation fails to disclose providing a review request in

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response to at least an inference, wherein the inference is based at least on an estimation of how long it will take to evaluate the purchased item. Rather, Klingman, at Column 20, lines 55-59, appears to disclose that it is up to the buyer to decide to wait a period of time and then it is further up to the buyer to initiate submitting a critique.

Klingman therefore not only fails to disclose the claimed invention, but actually teaches away from an inference "based at least on an estimation of how long it will take to evaluate the purchased item," as recited by Claim 24. Therefore, Applicant respectfully traverses the Examiner's rejection of Claim 24.

With respect to Claim 26, because Klingman fails to disclose making an inference as discussed above, there would be no motivation to modify Klingman so that "the inference is based at least on a customer survey on how long it takes consumers to read books," as recited by Claim 26. Indeed, as similarly discussed above, because Klingman allows a buyer to submit a review as soon as a product is purchased, and even before having the product delivered, Klingman has no need to base an inference on a customer survey on how long it takes consumers to read books. Therefore, Applicant respectfully traverses the Examiner's rejection of Claim 26.

With respect to Claim 27, the Examiner admits that Klingman "does not expressly disclose making inferences on needed usage times based on the customer ordering the new item" but asserts that "it would have been obvious . . . to make an inference about the amount of time needed to use an item based on the consumer using said item because taking the consumer's specific attributes into consideration would increase the accuracy of the inference." However, Claim 27 does not claim making "an inference about the amount of time needed to use an item based on the consumer using said item," as proposed by the Examiner. Rather, amended Claim 27 recites "where the inference is based at least in part on the customer ordering a second item." Further, Applicant notes that Klingman completely fails to teach or suggest maintaining any information about a customer other than that necessary to confirm identity. Thus, Klingman is indifferent to particular customer traits, and thus teaches away from Claim 27. Applicant therefore respectfully traverses the rejection of Claim 27.

Applicant respectfully traverses the Examiner's rejection of Claims 30-33 for the reasons discussed above with respect to Claims 18. In addition, Applicant respectfully traverses the Examiner's assertion that estimating based on these traits would be obvious over Klingman in

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view of Sheff. As similarly discussed above with respect to Claim 1, Sheff discloses using fixed, pre-determined time periods to send out customer surveys regardless of the particular type of vehicle. Therefore, Sheff teaches away from considering particular traits of a given item, and thus even if Klingman were modified by Sheff, the combination would not teach each element of the claimed invention.

Because neither Klingman or Sheff alone or in combination teach or suggest inferring when the customer has evaluated the item, the cited references further fail to teach or suggest that “where the item is a car and the act of inferring when the customer has evaluated the item is related to an estimated time it will take the customer to drive a first amount,” as recited by amended Claim 30. The cited references further fail to teach or suggest that “where the item is a video and the act of inferring when the customer has evaluated the item estimated time period is related to an estimated time until the customer has viewed the video,” as recited by Claim 31. Similarly, the cited references further fail to teach or suggest that “where the item is an audio recording and the act of inferring when the customer has evaluated the item is related to an estimated time until the customer has listened to the audio recording,” as recited by Claim 32, or that “where the item is a book and the act of inferring when the customer has evaluated the item is related to the type of book,” as recited by Claim 33. Applicant therefore respectfully traverses the rejection of Claims 30-33.

With respect to Claim 34, the Examiner asserts that Klingman, at Column 9, lines 41-46, teaches a method where the review request is provided to a recipient who is the user of the product. The Examiner admits that Klingman “does not expressly disclose that the item is a gift for a recipient.” Nonetheless, the Examiner asserts that “it would have been obvious . . . to supply the review request to the user of the product rather than the purchaser.” However, Klingman at Column 9, lines 41-46, specifically mentions “the buyer” *three times* as the person giving the rating. Therefore, Klingman teaches away from “where the item is a gift for a recipient and the review request is provided to the recipient,” as recited by Claim 34.

Further, if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious. In re Ratti, 270 F.2d 810, 123 USPQ 349 (CCPA 1959) (Claims were directed to an oil seal comprising a bore engaging

portion with outwardly biased resilient spring fingers inserted in a resilient sealing member. The primary reference relied upon in a rejection based on a combination of references disclosed an oil seal wherein the bore engaging portion was reinforced by a cylindrical sheet metal casing. Patentee taught the device required rigidity for operation, whereas the claimed invention required resiliency. The court reversed the rejection holding the "suggested combination of references would require a substantial reconstruction and redesign of the elements shown in [the primary reference] as well as a change in the basic principle under which the [primary reference] construction was designed to operate." 270 F.2d at 813, 123 USPQ at 352.). MPEP, § 2143.01. Here Klingman teaches:

when a 900 number purchase occurs, the buyer's caller ID is stored in the ID table 52 (FIGS. 3 and 4) which is maintained by BUY server 48. When a buyer wishes to "SCORE" the purchased product, as indicated by "clicking" on the SCORE button of the TRY display, an '800' number is retrieved from the TRY server, and this number is used to place a call to the BUY server 48 that maintains the ID table 52. A caller ID will accompany the incoming '800' number call to the BUY server. This incoming caller ID is used to search the table of stored buyers' caller ID numbers. If a match is found, the buyer is allowed to enter his/her score in accordance with his/her satisfaction with the product. The buyer's caller ID number is then deleted from ID table 52 by BUY server 48 thereby allowing each purchaser of the product one and only one opportunity to score the product.

Thus, Klingman teaches using the buyer's Caller ID to verify that the person submitting the review is **the buyer**, before allowing the review to be submitted. Klingman further teaches that that this "*should in turn prevent manipulation of scores and provide valuable information to the buying public from the most informed segment of the population, namely, those who have bought and used the product in question.*" Thus, Klingman teaches that the scores should come from those who have both bought **and** used the product, not those who have simply bought the product or used the product. The modification proposed by the Examiner would change the principle of operation of Klingman, and hence, the teachings of Klingman are not sufficient to render the claimed invention prima facie obvious. Applicant therefore respectfully traverses the rejection of Claim 34.

With respect to Claim 36, the Examiner asserts that Klingman teaches "providing an item review request after a period of use of said purchased item by the purchasing customer." The Examiner also asserts that "selecting a time for requesting a review" would be obvious for the same reasons given when asserting that the "inferring when the customer has evaluated the item"

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act was obvious in the rejection of Claim 18. Applicant respectfully traverses the Examiner's rejection of Claim 36 for the reasons discussed above with respect to Claim 18. Klingman discloses accepting reviews through the user-initiated "clicking" of the "SCORE" button, said button apparently displayed *whenever* an product web page is displayed by the system, *even before a user has purchased the product, and whether or not a user has had time to evaluate a purchased product*. Thus, Klingman discloses displaying the review request *even before the item is purchased* and therefore the time at which the review request is provided is **not** selected at least in part on an estimated evaluation period. Klingman further discloses a system that appears to allow a buyer to rate a purchased item immediately after purchasing, *even before the item is delivered*, and before an opinion could possibly have been formed.

For at least the foregoing reasons, Klingman teaches away from providing a review request as a result of a purchase, and therefore has no need, and fails to teach or suggest "selecting a time for requesting a review" as claimed. Applicant therefore respectfully traverses the rejection of Claim 36.

With respect to Claim 37, the Examiner asserts that Klingman at Column 1, lines 36-47 and Column 9, lines 44-46, teaches a method where the review of the item serves as a measure on the seller of the item, but admits that Klingman does not disclose "directly reviewing an item seller." The Examiner nonetheless asserts that "asserts that it would obvious to one of ordinary skill

to directly rate an item seller instead of using the rating of an item to reflect the customer's opinion of the seller of said item because doing so would streamline the method and make the scores easier to understand by showing the feelings of the customer about the seller in a less convoluted matter

Because Klingman does not teach or suggest directly or indirectly rating a seller, Applicant respectfully traverses the Examiner's rejection. The rating of items and the rating of sellers may be completely independent issues. In contrast to the Examiner's assertion, Klingman fails to teach or suggest that the quality of the item reflects on the quality of the seller, as the seller in Klingman does not appear to be a manufacturer. The Examiner has taken the position that Klingman teaches "rating and the means for rating an item as a way of punishing or rewarding the seller of said item." However, the Examiner has inadvertently mischaracterized

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Klingman. As cited below, Klingman teaches rating an item as a way of *punishing the producer*, not the seller, of a product.

The references to sellers in the language cited by the Examiner refer to “where *consumer feedback regarding a product* is favorable to the seller, scoring or rating information can be a very effective marketing tool for the seller” at Column 1, lines 42-44 (emphasis added), and “the buyer may wish to . . . *punish the producer of a product* by participating in the evaluation system” at Column 9, lines 43-46. Klingman therefore discloses only rating to reflect on the quality of the *product itself and punishing the producer of the product using ratings*, and does not teach or suggest *rating the seller, either directly or indirectly*. While a seller might benefit if buyers highly rate products sold by the seller, this does not mean or imply that the seller is highly rated. For example, a car dealer offering terrible service may nonetheless sell a high quality brand of cars and will benefit if the brand of cars is highly rated. Thus, Klingman does not teach or suggest the method as claimed by of Claim 37. Applicant therefore respectfully traverses the rejection of Claim 37.

With respect to Claim 40, the Examiner admits that Klingman does not expressly teach an evaluation period that varies from a first item to a second item, but that it would have been obvious “that when an evaluation period is estimated for a first item and an evaluation period is estimated for a second item, these evaluation periods will vary because the amount of time needed to use an item . . . is dependant on the item and its use.” As similarly discussed above with respect to Claim 36, Klingman teaches away from estimating by what date a first customer will have at least initially evaluated an item. Thus, Klingman teaches away from basing actions based on an estimated evaluation period and so teaches away from “where the evaluation period varies from a first item to a second item,” as recited by Claim 40. Applicant therefore respectfully traverses the rejection of Claim 40.

Discussion of Rejections under 35 U.S.C. § 103(a) over Klingman in View of Hiam

With respect to Claim 29, the Examiner admits that Klingman does not disclose “offering the customer an incentive to provide the item review,” but nonetheless suggests that it would be obvious to combine the teachings of Klingman with those of Hiam, which the Examiner asserts

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includes "offering a customer an incentive in exchange for the customer providing an item review."

Applicant respectfully traverses the Examiner's rejection of Claim 29. An exchange is to give in return for something received. On page 100-101, in the context of making surveys more appealing to respondents, Hiam discloses that when sending out a survey "perhaps the inclusion of a sales promotion (coupon, entry form for a contest, and so on) can make the respondents' experience more pleasurable - and ensure a reasonably high response rate." Thus, because the survey recipient is not required to give anything, Hiam does not teach or suggest offering a reward *in exchange* for a review. Indeed, Applicant notes that because Hiam discloses inclusion of a sales promotion along with the survey to strive toward a target response rate, Hiam teaches *giving a sales promotion to every person that receives the survey*, not just those that return the survey. Indeed, Hiam does not, for example, teach that recipients of a sales promotion have to return the sales promotion if they fail to complete and submit a survey. Thus, Hiam teaches away from offering the customer a reward *in exchange* for the customer providing a review.

Discussion of Rejections under 35 U.S.C. § 103(a) over Klingman in View of InstantSurvey

With respect to Claim 25, the Examiner admits that Klingman does not disclose a method where the review request is selectively delivered on one of a weekend or holiday. Nevertheless, the Examiner asserts that in Reference A, page 1-2 and Reference B, page 2, InstantSurvey discloses a method where the review request is delivered electronically and the surveyor can customize the survey and its delivery and that it would have been obvious to choose to deliver a review request on a weekend or a holiday because doing so would increase the likelihood of response. However, InstantSurvey does not teach or suggest, in either Reference A or Reference B, customization of the dates or times of delivery, and instead the references appear to disclose electronic delivery taking place immediately after e-mail addresses are provided. Thus, Klingman does not suggest the desirability of delivering surveys at specific dates or times. For this reason, and for the reasons discussed above with respect to Claims 6, 8 and 9 regarding the lack of motivation to combine Klingman and InstantSurvey, Applicant respectfully traverses the Examiner's rejection of Claim 25.

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Discussion of Rejections under 35 U.S.C. § 103(a) over Klingman in View of Chislenko

With respect to Claim 22, the Examiner admits that Klingman fails to disclose a method where the received review is used to recommend other items to the customer. Nonetheless, the Examiner states that Chislenko teaches a method where the received review is used to recommend other items to the customer. The Examiner takes the position that it would have been obvious to one of ordinary skill in the art to use a previous product review of a customer to provide said customer with recommendations for further purchases because using prior knowledge of the customer would enhance recommendation accuracy and increase sales for the recommending company.

However, not only does Klingman fail to teach or suggest using a received review to recommend other items to a customer, Klingman completely fails to disclose or suggest providing any type of recommendations of other items to the customer. Thus, there would be no motivation to modify Klingman as proposed by the Examiner to "enhance recommendation accuracy." Further, Klingman fails to disclose having a profile of items rated by a user as required by Chislenko, at Column 2, lines 23-24. Therefore, Klingman cannot be modified to calculate similarity factors as described in Chislenko at Column 2, lines 28-38, which discloses that the similarity factors are used to select neighboring users, wherein a weight is assigned to each of the neighboring users. The neighboring users and the weights given to them are used together with the ratings given to items by those neighboring user to recommend at least one item to the initial user. Because Klingman does not have a profile of items rated by a user, Klingman cannot be modified to recommend items as disclosed by Chislenko. Applicant therefore respectfully traverses the rejection of Claim 22.

Applicant similarly traverses the rejection of Claim 23, where the received review is used to recommend the item to other customers. Klingman fails to disclose having a profile of items rated by a user as required by Chislenko, at Column 2, lines 23-24. Therefore, Klingman cannot be modified to calculate similarity factors as described in Chislenko at Column 2, lines 28-38, which discloses that the similarity factors are used to select neighboring users, wherein a weight is assigned to each of the neighboring users. The neighboring users and the weights given to them are used together with the ratings given to items by those neighboring user to recommend at least one item to the initial user. Because Klingman does not have a profile of

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items rated by a user, Klingman cannot be modified to recommend items as disclosed by Chislenko. Applicant therefore respectfully traverses the rejection of Claim 23.

With respect to Claim 28, the Examiner admits that Klingman does not disclose presenting the customer with a list of items and asking the customer if the customer wants to review the items. However, the Examiner asserts that Klingman teaches "allowing the user to choose whether or not he/she wants to rate said item" at Column 10, lines 41-46. The Examiner also asserts that Chislenko, at Column 4, lines 5-9, teaches a "method further comprising presenting to the customer a list of items purchased by the customer and asking the customer if the customer wants to review one or more of the listed items." The Examiner further asserts that it would be obvious "to present the customer with a list of items purchased and ask the customer to review one or more of the items because it increases the flexibility of the system and also makes the system more user friendly."

Applicant respectfully traverses the Examiner's characterization of Chislenko and the rejection of Claim 28.

Chislenko, at Column 4, lines 5-9, discloses:

Whenever a user profile is created, a number of initial ratings for items may be solicited from the user. This can be done by providing the user with a particular set of items to rate corresponding to a particular group of items.

Rather than disclosing "presenting to the customer a list of items purchased by the customer," as argued by the Examiner, Chislenko does not contemplate presenting a list of items *purchased by the customer*. Indeed, Chislenko merely discloses presenting a list made to correspond to particular groups of items. Thus, Chislenko does not teach or suggest the limitation asserted by the Examiner. Because a prima facie case of obviousness is required by M.P.E.P. § 2143 to have prior art that teaches or suggests every limitation of the claim, Applicant respectfully traverses the Examiner's assertion of obviousness and the rejection of Claim 28.

With respect to Claim 39, the Examiner admits that Klingman does not disclose the review being used to generate a customer profile. Nonetheless, the Examiner takes the position that Chislenko teaches a method further comprising using the review to generate a customer profile. The Examiner argues that it would have been obvious to one of ordinary skill in the art to use a review to generate a profile of a customer because using prior knowledge about a customer would allow for more accurate estimations of the review time needed by said customer.

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Because Klingman fails to teach or suggest estimating the review time needed by a customer, there would be no need or motivation to modify Klingman to allow for more accurate estimations of the review time. Applicant therefore traverses the rejection of Claim 39.

Summary

In view of the foregoing remarks and amendments, Applicant respectfully submits that independent Claims 1, 18, and 36 as amended are patentably distinct over the cited art and are in condition for allowance. Claims 2-13, 19-35, and 37-40, which correspondingly depend from independent Claims 1, 18, and 36 and further define Claims 1, 18 and 36, are likewise patentably distinct over the cited art and are in condition for allowance. Applicant respectfully requests allowance of Claims 1-13 and 18-40.

Request for Telephone Interview

If there are any issues that can be resolved by telephone, the Examiner is respectfully requested to call the undersigned attorney of record at (310) 407-3461 or at the number set forth below.

Respectfully submitted,

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